



Province of Alberta  
Order in Council

O.C. 161/2019

SEP 13 2019

# ORDER IN COUNCIL

Approved and ordered:

Lieutenant Governor  
or  
Administrator

The Lieutenant Governor in Council makes the Provincial Judges and Masters in Chambers Compensation Order in the attached Appendix.

  
CHAIR

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For Information only

Recommended by: Minister of Justice and Solicitor General

Authority: Provincial Judges and Masters in Chambers 2017  
Compensation Commission Regulation (AR 62/2017)  
(section 8)

## Appendix

### Provincial Judges and Masters in Chambers Compensation Order

1. In this Order and its Schedule,
  - (a) “2017 Commission” means the 2017 Alberta Judicial Compensation Commission established under the Regulation;
  - (b) “2017 Commission Report” means the Report and Recommendations of the 2017 Alberta Judicial Compensation Commission, as amended May 23, 2019, that was prepared by the Commission pursuant to the Regulation;
  - (c) “Government” means the Government of Alberta;
  - (d) “recommendations” means the recommendations of the Commission as set out in the 2017 Commission Report;
  - (e) “Regulation” means the *Provincial Judges and Masters in Chambers 2017 Compensation Commission Regulation* (AR 62/2017);
  - (f) “Schedule” means the Schedule to this Order.
  
2. Pursuant to section 8 of the Regulation, the Lieutenant Governor in Council hereby makes the following decisions:
  - (a) to reject the recommendation that the annual salary for Provincial Court Judges and Court of Queen’s Bench Masters be increased, for the reasons set out in the Schedule;
  - (b) to accept the recommendation that the age of eligibility for part-time service be changed to 55 from the current eligibility age of 60;
  - (c) to accept the recommendation that it is unnecessary for the Government to pass a regulation containing the provisions of the judicial indemnity; and
  - (d) to accept the recommendation that the professional allowance for Provincial Court Judges and Masters be increased from \$3,750 per year to \$4,500 per year, effective April 1, 2017.

# Schedule

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## **2017 Commission’s Salary Recommendation**

1. The 2017 Commission recommended salary increases for Provincial Court Judges (judges) and Court of Queen’s Bench Masters (masters) that, if implemented, would result in a compound increase of 8.34% over four years. The recommended increases are:

- (1) effective April 1, 2017, an increase of 0.81% to \$296,382;
- (2) effective April 1, 2018, an increase of 2.00% to \$302,304;
- (3) effective April 1, 2019, an increase of 2.38% to \$309,500; and
- (4) effective April 1, 2020, an increase of 2.91% to \$318,500.

2. After careful consideration of the recommendations, the Lieutenant Governor in Council has decided to reject the recommended salary increases and maintain the annual salary paid to judges and masters at \$293,991 through March 31, 2021.

## **Reasons for the Salary Decision of the Lieutenant Governor in Council**

3. In the 2005 decision *Bodner v Alberta* (“*Bodner*”), the Supreme Court of Canada established the test that a government must meet in order to justify rejection of a judicial compensation commission recommendation:<sup>1</sup>

- (1) Has the government provided legitimate reasons for rejecting the commission’s recommendations?
- (2) Do those reasons rely upon a reasonable factual foundation?
- (3) Viewed globally, has the commission process been respected? Have its purposes – preserving judicial independence and depoliticizing the setting of judicial compensation – been achieved?

4. As recognized in *Bodner*, a government reviewing a compensation commission’s recommendations appropriately brings to bear its accumulated expertise and constitutional responsibility for management of the province’s financial affairs.<sup>2</sup> There are key areas where the Lieutenant Governor in Council disagrees with the approach taken and conclusions reached by the 2017 Commission, or where circumstances have changed since the 2017 Commission issued its report.

5. The Lieutenant Governor in Council has determined that significant errors were made by the 2017 Commission in its consideration of the criteria set out in the Regulation and its weighting of the evidence provided by the parties in relation to those criteria. Those errors, combined with new evidence that has arisen since the date of the 2017 Commission Report,

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<sup>1</sup> *Bodner v Alberta*, 2005 SCC 44 [*Bodner*] at para 31.

<sup>2</sup> *Bodner* at para 30.

justify the rejection of the 2017 Commission's salary recommendation by the Lieutenant Governor in Council.

6. The reasons of the Lieutenant Governor in Council for rejecting the recommended salary increases are:

- A. The 2017 Commission failed to adequately consider certain drastic negative economic changes since the date of the previous commission's report.
- B. The 2017 Commission failed to give proper weight to certain expert economic evidence and thus in reaching its conclusions significantly understated the severity and duration of the negative effects of the recent recession.
- C. The 2017 Commission failed to give proper weight to the level of increases or decreases provided to other programs and persons funded by the Government.
- D. The 2017 Commission reached an unsupported conclusion that maintaining the current judicial salary would endanger the financial security of judges.
- E. The 2017 Commission did not consider evidence of relative tax burden when comparing total judicial compensation between provinces.
- F. New economic and fiscal evidence available since the release of the 2017 Commission Report justifies a departure from the 2017 Commission salary recommendation.

7. Contrary to the direction given by the Supreme Court of Canada, the 2017 Commission considered evidence presented with regard to economic changes that took place after the date of the previous commission's report but prior to April 1, 2017, to be background only. As a result, the 2017 Commission did not give adequate consideration to the evidence that drastic negative economic changes had occurred that were not known to the previous commission, or by the Lieutenant Governor in Council when making a decision regarding the previous commission's recommendations. Had the 2017 Commission given adequate weight to the evidence, it would have realized that, because the judges did not share in the precipitous decline in per capita household income that took place during that time period, they were well ahead of the average Albertan as of April 1, 2017.

8. Contrary to the regulated criteria, the 2017 Commission did not consider or did not give adequate weight to some of the expert evidence presented which demonstrated that the drastic, sudden and unexpected chain of events which occurred in 2015 and 2016 had a severe and long lasting impact on Alberta's economy. This error led the 2017 Commission to base their salary recommendations on a more optimistic view of the Alberta economic and fiscal situation than was warranted in the circumstances.

9. The 2017 Commission incorrectly minimized evidence presented with regard to the lack of increases provided to others paid by Government. The 2017 Commission chose to focus on

incremental experienced-based increases and non-salary gains experienced by some union employees. As a result, the 2017 Commission erred by failing to recognize that an across-the-board policy of salary restraint was in place which the judges and masters should be a part of.

10. The 2017 Commission incorrectly reached the conclusion that increases in salary were required in order to maintain judicial independence. The evidence shows that Alberta judges were the highest paid provincial court judges in the country in 2016–2017 and, remaining at the same salary level, they will likely continue to be among the highest paid through March 31, 2021.

11. The 2017 Commission did not address the Minister’s argument that, if total compensation is compared to judges in other provinces, the relative tax burden of judges in the various jurisdictions must be included in order for the picture to be complete. As a result, the 2017 Commission wrongly concluded that increases in judicial salary were required.

12. New facts and circumstances have arisen since the release of the 2017 Commission Report which justify a departure from the 2017 Commission’s recommendations. Many of the indicators considered under the economic and fiscal criteria have moved in a negative direction. Projections have become progressively less optimistic overtime, with the Conference Board of Canada now forecasting a mild recession for 2019.

**A. The 2017 Commission failed to adequately consider certain drastic negative economic changes since the date of the previous commission’s report.**

13. The Lieutenant Governor in Council has determined that the Commission erred by failing to give sufficient weight to economic changes since the date of the previous commission’s report. Most critically, the 2017 Commission improperly excluded a drastic drop in Alberta real primary household income per capita (“real household income”) from the final analysis on which its recommendations were based.

*Default starting point for economic analysis*

14. The Supreme Court of Canada provided direction in *Bodner* as to the approach a commission should take in conducting its analysis:

The process is flexible and its purpose is not simply to “update” the previous commission’s report. However, in the absence of reasons to the contrary, **the starting point should be the date of the previous commission’s report.**<sup>3</sup>  
[Emphasis added]

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<sup>3</sup> *Bodner* at para 14.

15. This approach was further elaborated on by the British Columbia Court of Appeal:

Sometimes, the result may be to over-compensate judges based on unforeseen financial circumstances that subsequently develop, as, arguably, was the case in 2007. Because the accepted 2007 salary levels were based on an optimistic financial forecast that changed, no increase was sought or recommended for 2010. On other occasions the compensation may fall short.

Subsequent commissions can and do address these situations. Although commissions may be informed by previous recommendations, each commission inquiry is a discrete event.<sup>4</sup>

16. The approach described by the Supreme Court of Canada and the British Columbia Court of Appeal is sensible and should be followed. Commissions making prospective salary recommendations rely on projections of key economic indicators. Each commission should begin its economic analysis where the previous one left off, as marked by the date of the report. Any actual economic data that was not available to the previous commission must be given full consideration and weight by the next.

17. The 2013 Alberta Judicial Compensation Commission (“2013 Commission”) issued its recommendations on February 17, 2015.<sup>5</sup> They were accepted by the Lieutenant Governor in Council on July 8, 2015.<sup>6</sup> Neither the 2013 Commission nor the Lieutenant Governor in Council could have taken into account economic developments after those dates. Most notably, the developments include a drastic and unforeseeable drop in real household income of 12.9% over the 2016 calendar year.<sup>7</sup>

18. In its submissions to the 2017 Commission, the Alberta Provincial Judges’ Association (“APJA”) argued that the Commission should not examine actual economic data from before the start date of its mandate:

Routinely revisiting the work of past commissions based on actual results will defeat the process. Such a revisiting should occur only in the rarest of circumstances, such as when a dramatic change, considering the totality of all of the relevant criteria, occurs that was completely unforeseen by the earlier

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<sup>4</sup> *Provincial Court Judges’ Association of British Columbia v British Columbia (Attorney General)*, 2015 BCCA 136 at paras 35–36.

<sup>5</sup> An amended report was issued March 18, 2015. Under the *Provincial Judges and Masters in Chambers 2013 Compensation Commission Regulation*, Alta Reg 33/2013, s 7(3), the 2013 Commission could only amend the report so far as necessary to deal with requests from the Minister or Alberta Provincial Judges’ Association to address obvious errors or issues that were raised during the inquiry but not dealt with in the report.

<sup>6</sup> OC 172/2015.

<sup>7</sup> In the evidence submitted to the 2017 Commission, the decline in real household income in 2016 was calculated at 9.7%. Based on revised data released by Statistics Canada in November 2018, a more accurate measure of the magnitude of the decline is 12.9%. See attached table for supporting economic data.

Commission. In the absence of something significant that was entirely unforeseen, subsequent JCCs must rely on the past JCC as having set appropriate compensation.<sup>8</sup>

19. The APJA suggests that each commission should rely on projections, but that the next commission should never look backward, other than in extreme circumstances. Such an approach would lead to a commission process increasingly untethered to reality. Comparison of past projections to actual results is not onerous or exceptional. It is a fundamental requirement of any responsible fiscal and economic analysis.

20. Even by the APJA's own standard, a 12.9% decline in real household income must qualify as a dramatic change, and it was unforeseen at the date of the last report. While the 2013 Commission noted a "drop in resource-based royalty revenues in the near term...,"<sup>9</sup> the Commission did not alter its analysis which predicted significant increases in real household income through 2018.<sup>10</sup>

21. Regardless, the Lieutenant Governor in Council is not suggesting that each commission should sit in judgment of the previous one. In its report, the 2017 Commission correctly states that it is not its role to second-guess the 2013 Commission.<sup>11</sup> As stated in the Minister's submissions, the 2017 Commission was not being asked to find that the 2013 Commission had committed any error.<sup>12</sup> What was necessary, however, was for the 2017 Commission to consider whether the current judicial salary as of March 31, 2017 was appropriate for the period of April 1, 2017 to March 31, 2021. That analysis needed to take as its foundation the actual economic and fiscal changes occurring since the date of the previous commission's report.

#### *Exclusion of decline in real household income from final analysis*

22. While the 2017 Commission did not adopt the APJA's view that past actual results are irrelevant, it incorrectly treated economic changes between the date of the 2013 Commission's report and March 31, 2017 as background only. The 2017 Commission's report briefly discussed changes that occurred in 2015–2017, including the 2016 drop in real household income, but only gave primary consideration to economic changes from April 1, 2017 to March 31, 2021.<sup>13</sup> That is the mandate period for its recommendations, but not a boundary for consideration of economic changes.

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<sup>8</sup> APJA Reply Submission to the 2017 Commission at para 115.

<sup>9</sup> *Report and Recommendations of the 2013 Alberta Judicial Compensation Commission* [2013 Commission Report] at 42.

<sup>10</sup> 2013 Commission Report at 29–31.

<sup>11</sup> 2017 Commission Report at 31.

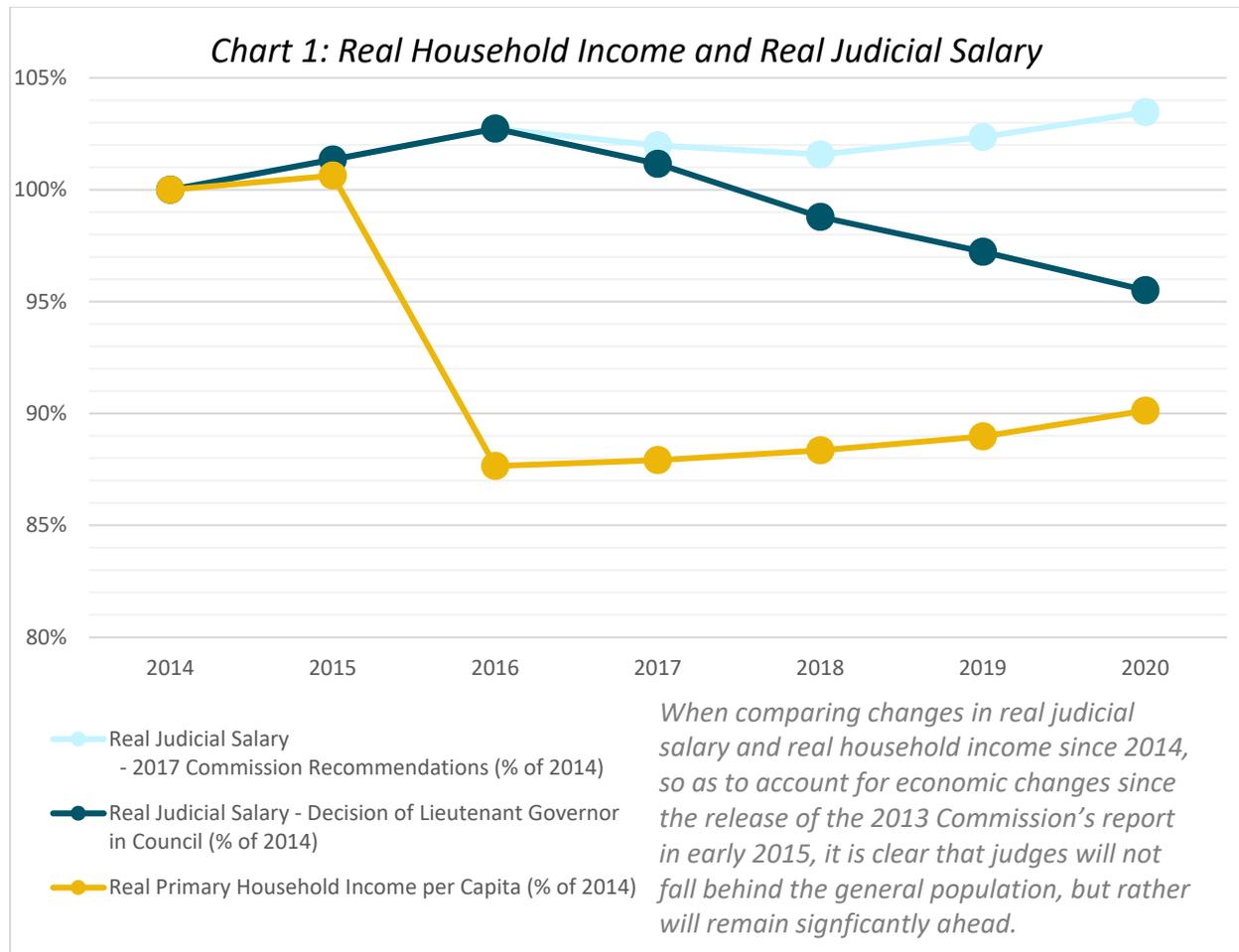
<sup>12</sup> Minister's Submission to the 2017 Commission at para 281.

<sup>13</sup> See, e.g., "The forecasted data thus show that, over the 2017–2021 period, Alberta Finance predicts that Personal/Primary Household income per capita will average about 1.2% above the CPI rate of inflation." 2017 Commission Report at 35.

23. The narrowness of the 2017 Commission’s approach is particularly evident in its conclusion that, without increases:

...judges and Masters would fall significantly behind the overall Alberta population, and increasingly so over the four-year term.<sup>14</sup>

24. Such a conclusion is incompatible with having taken into account the economic changes since the date of the previous commission’s report. Albertans’ real household income declined drastically in 2016, while the salary of the judges did not. When comparing changes in real judicial salaries<sup>15</sup> to changes in real household income since the beginning of 2015, the judges come out far ahead of the general population. Even without salary increases, the judges will not fall behind the overall population through March 31, 2021. Real household income at the end of 2020 is projected to only be at 90% of its 2014 level.<sup>16</sup>



<sup>14</sup> 2017 Commission Report at 38. See also the 2017 Commission’s conclusion that the Minister’s position did not give proper weight to increases and decreases in real household income, at 56.

<sup>15</sup> That is, judicial salaries as measured in real dollars, taking into account inflation over time, as opposed to nominal judicial salaries, which reflect the face value of the salary as set in the regulation.

<sup>16</sup> See attached Table 6 for supporting economic data.

25. Real household income is one of the criteria set in the Regulation,<sup>17</sup> and it underwent a recent, shocking decline. Where should that decline receive consideration? Three approaches have been proposed through the 2017 Commission process:

- (1) Under the approach proposed by the APJA, the 2016 decline would be disregarded. It was not foreseen by the 2013 Commission, and is now too far in the past to revisit.
- (2) Under the approach taken by the 2017 Commission, the 2016 decline was observed, but only historically, falling outside its direct mandate. This led to the incorrect conclusion that increases are necessary to prevent judges from falling behind the overall population.
  - (a) The 2017 Commission did parenthetically consider that past economic factors could “give some justification for a tempered increase during the term of our mandate.”<sup>18</sup> That standard falls well short of the weight the decline in real household income should have been given.
  - (b) The 2017 Commission also notes that the 2013 Commission had firm data for a significant portion of its mandated term.<sup>19</sup> While this is true, the 2017 Commission was required to fully consider and weigh the economic data that the 2013 Commission did not have.
- (3) Under the approach set by the Supreme Court of Canada in *Bodner*, the 2017 Commission should have included in its economic analysis all changes occurring since the date of the 2013 Commission’s report.

26. The Lieutenant Governor in Council concludes that only the third approach gives appropriate weight to the economic criteria. Such an analysis markedly changes the landscape for evaluating salary recommendations for April 1, 2017 onward. Because judges did not share in the precipitous decline in real household income, they are well ahead of the average Albertan, and will remain so, at their current salary, through March 31, 2021.

*Failure to consider changes in the cost of living since previous commission’s report*

27. The 2017 Commission also failed to consider changes in the cost of living<sup>20</sup> in 2015 and 2016. Failure to consider this evidence was another factor that led the 2017 Commission to incorrectly reject the appropriateness of maintaining judicial salaries at their current level.

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<sup>17</sup> S. 13(f) of the Regulation requires the 2017 Commission to take into consideration “increases and decreases, as applicable, in the Alberta real primary household income per capita”.

<sup>18</sup> 2017 Commission Report at 31.

<sup>19</sup> 2017 Commission Report at 32.

<sup>20</sup> S. 13(h) of the Regulation requires the 2017 Commission to take into consideration “the Alberta cost of living index and the position of the judges relative to its increases or decreases, or both”.

28. The 2017 Commission’s description of its mandate indicates it adopted real judicial salaries as the baseline for making recommendations:

Ours is a narrow question which is essentially this: given all the criteria, should the 160 or so judges and Masters see the buying power of their salaries erode each year? Should they maintain their relative buying power, keeping abreast of inflation? Or should they advance somewhat beyond the rate of inflation?<sup>21</sup>

We see, in this criterion [*i.e., cost of living*], a general intention (subject to changes due to the other criteria) that fair compensation requires a maintenance of real income rather than erosion through inflation.<sup>22</sup>

29. This is a reasonable approach to take, provided it is kept in mind that increases in judicial salaries are not mandatory and a downward adjustment in real salaries – such as would result from holding nominal salaries at a constant level – will sometimes be appropriate. But with that in mind, it is a sound approach to use real judicial salaries as the baseline for analysis. It allows a commission to account for the cost of living criterion and proceed to consider adjustments in real terms based on the other criteria.

30. The 2017 Commission made a presumption that the recommendations of the 2013 Commission were appropriate:

Our assessment, however, is that the 2013 Commission’s recommendations did not just rely on that one criterion [*i.e., cost of living*]. The 2013 Commission’s Report, read as a whole, refers to much broader considerations and takes into account all the criteria. Indeed, we must presume that the reports of previous Commissions reflect the statutory requirement to weigh all relevant criteria, at least in the absence of evidence to the contrary.<sup>23</sup>

31. However, even when making such a presumption, it is necessary to consider how the projections relied on by the previous commission compared to actual economic changes. Given that the 2017 Commission

(a) adopted real salaries as the appropriate baseline for examining judicial salaries, and

(b) adopted the presumption that the 2013 Commission set salaries appropriately, weighing all relevant criteria,

then it necessarily follows that the 2017 Commission should have considered how real judicial salaries at the end of the 2013 Commission’s mandate differed from what was predicted. Taking

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<sup>21</sup> 2017 Commission Report at 33.

<sup>22</sup> 2017 Commission Report at 49–50.

<sup>23</sup> 2017 Commission Report at 31.

that difference into account does not undermine or “claw back”<sup>24</sup> the recommendations of the 2013 Commission, but rather gives effect to them in real terms.

32. Specifically, the 2017 Commission should have taken into consideration how the actual changes in the Consumer Price Index for Alberta (“CPI”) compared to the projected values on which the 2013 Commission relied:

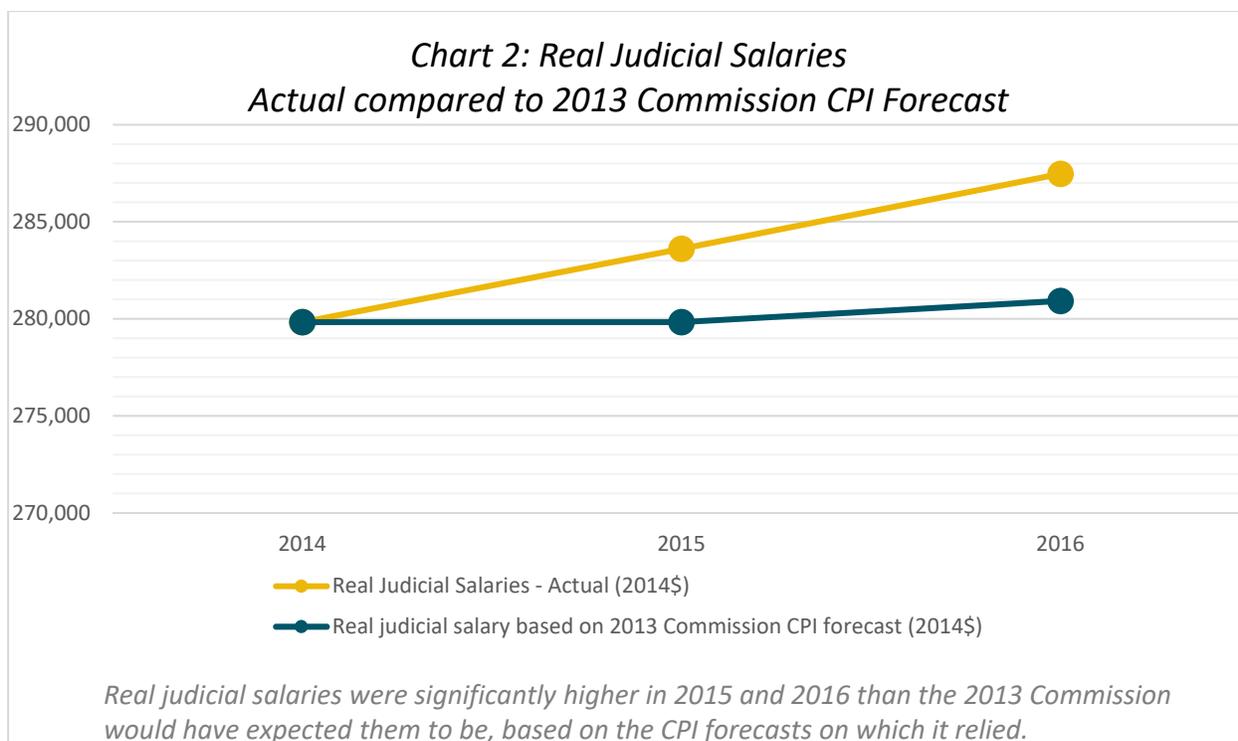
*Table 1: Consumer Price Index Growth*

	<b>2015</b>	<b>2016</b>
2013 Commission Projection	2.5%	2.1%
Actual	1.1%	1.1%

33. The 2017 Commission declined to make such a comparison, stating that the earlier commission’s recommendations were based on all of the criteria, not only cost of living. But so long as cost of living was factored in by the 2013 Commission as one of the criteria, the difference between projected real salary and actual real salary was relevant. As the 2017 Commission framed its mandate, a commission may conclude that real judicial salaries should decline, stay steady, or increase above the rate of inflation. The 2013 Commission recommended salary increases that would have resulted in a projected 0.4% increase in real salary over 2015 and 2016 combined. Because CPI was much lower than projected, the actual increase in real salary that resulted was 2.7%. If the 2013 Commission is presumed to have made appropriate recommendations based on all the criteria, the 2017 Commission should have considered that the real salaries resulting from those recommendations were 2.3% higher at the end of 2016 than the projections relied on by the 2013 Commission indicated they would be.

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<sup>24</sup> 2017 Commission Report at 31.



34. While the 2017 Commission stated that it considered “the significant economic changes for 2014–2016”<sup>25</sup> in a broad sense, its discussion of the cost of living criterion was limited to April 1, 2017 and onwards. This excluded relevant cost of living data from 2015 and 2016 from its analysis, and resulted in a salary recommendation that incorrectly rejected the appropriateness of continuing nominal judicial salaries at their current level.

**B. The 2017 Commission failed to give proper weight to certain of the expert economic evidence and thus in reaching its conclusions significantly understated the severity and duration of the negative effects of the recent recession.**

35. The Lieutenant Governor in Council has determined that the 2017 Commission erred in its review and analysis of criteria F, G, and H (“the economic and fiscal criteria”). The specific wording of each of those criteria is as follows:<sup>26</sup>

- (f) Increases and decreases, as applicable, in the Alberta real primary household income per capita;
- (g) The need to provide fair and reasonable compensation in light of prevailing economic conditions in Alberta and the overall state of the economy, including the financial position of the Government;

<sup>25</sup> 2017 Commission Report at 31.

<sup>26</sup> S. 13(f)–(h) of the Regulation.

- (h) The Alberta cost of living index and the position of the judges relative to its increases or decreases, or both.

36. The Lieutenant Governor in Council is of the view that the 2017 Commission did not consider or did not give enough weight to certain expert and related evidence demonstrating the significant severity of and the likely lengthy duration of the damage to the Alberta economy and the fiscal position of the government which occurred as a result of the specific drastic, sudden and unexpected chain of events which occurred in 2015 and 2016. As a result, the 2017 Commission, in formulating its recommendations, erred by substantially understating both the severity of and the duration of the damage to the Alberta economy and the fiscal position of the Government.

Review of expert economic evidence

37. In a section of the 2017 Commission Report, entitled *Considerations related to the Alberta economy*,<sup>27</sup> the 2017 Commission commenced a review and analysis of the economic and fiscal criteria. At the beginning of that section, the 2017 Commission Report expressly stated that the 2017 Commission would “begin with an overview” and then would address each of the economic and fiscal criteria specifically.

38. The 2017 Commission did then embark on such a review and analysis which took up a good portion of the 2017 Commission Report (pages 27 to 51) and included specific references to some of the expert evidence presented by each of the parties. Specifically, the 2017 Commission referred to the expert evidence of Dr. Melville McMillan (“McMillan”), who was the APJA’s economic expert, and of Dr. Bev Dahlby (“Dahlby”) and Ms. Catherine Rothrock (“Rothrock”), who were the Minister’s economic experts. In this regard the Commission specifically stated:

With the aid of the parties’ submissions and the data and expertise provided by their economists, we have assessed the economic data for the period of our mandate.<sup>28</sup>

39. It is clear that the 2017 Commission accepted the overall consensus opinion of the experts that the events of 2015 and 2016 had an immediate severe negative effect on the Alberta economy as a whole and also a correspondingly sudden detrimental effect on the Government’s fiscal position. The 2017 Commission’s related comments and conclusions in the 2017 Commission Report in regard to the foregoing issues include the following:

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<sup>27</sup> 2017 Commission Report at 27–51.

<sup>28</sup> 2017 Commission Report at 28.

There is no sugarcoating the fact that, as a result of the collapse in world oil prices in mid-2014, the Alberta economy has been hard hit and in a prolonged and sustained way. This in turn has had a profound and negative effect on the Province's fiscal situation.<sup>29</sup>

The figures cited by the economists differ slightly, but in a "broad brush" sense they agree. Provincial deficits, even pre-2014, began to reduce the Province's sustainability fund. With the drastic drop in revenues between 2014 and 2016 the Province experienced substantial deficits.<sup>30</sup>

40. There are also instances in the 2017 Commission Report where the 2017 Commission referred to and relied specifically upon the expert evidence of either Rothrock or Dahlby, some of which are as set out below.

41. The 2017 Commission referred to and clearly accepted specific data relating to certain key Alberta economic indicators as provided by Rothrock in one of her reports.<sup>31</sup> This data covered a wide time frame (2010 to 2022) and included, as applicable, past confirmed or past estimated numbers or forecast numbers.

42. In specific regard to Criterion F (Alberta's real primary household income per capita), the 2017 Commission expressly relied on the data presented by Rothrock.<sup>32</sup> That data included the following<sup>33</sup>:

- (1) The significant cumulative decline in excess of 8% in Alberta's real primary household income per capita in the three year period of 2013 to 2016, including a decline of 9.7% in 2016 alone, which the 2017 Commission described as "the drastic fall in 2016"; and
- (2) The forecast for growth in real primary household income per capita between 2018 and 2022 is an average of about 1.2%.

43. It is further evident that the 2017 Commission also referred to and accepted certain of the expert opinions provided by Dahlby, as follows:

- (1) In regard to Criterion G (prevailing economy and financial position of the Government), the 2017 Commission expressly referred to the following excerpt from Dahlby's expert report:

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<sup>29</sup> 2017 Commission Report at 28.

<sup>30</sup> 2017 Commission Report at 42.

<sup>31</sup> See, e.g., 2017 Commission Report at 47–48, 50.

<sup>32</sup> 2017 Commission Report at 34–36.

<sup>33</sup> 2017 Commission Report at 35. As noted above, using revised Statistics Canada data, the decline in 2016 was 12.9%.

For eight years from 2000–01 to 2007–08, when resource revenues were high, the province had fiscal surpluses and its net financial assets peaked at \$31.7 billion in 2008–09. Over the last nine years, the province has run large deficits because of downturns in resource revenues and higher spending. As a result, the province has become a net debtor and there is no prospect for an early return to balance[d] budgets.<sup>34</sup>

(2) The 2017 Commission also noted the following:

GDP is a measure of the value of an economy’s output, made up of consumption, investment and net exports. We were provided with substantial information on Alberta’s GDP; both in “nominal” and “real” numbers. Nominal GDP reports the GDP figures unadjusted for inflation, while Real GDP offsets these figures by the rate of inflation; changes in output as opposed to changes in the value of output. ... Dr. Dahlby notes that Alberta’s real GDP per capita declined by 10% between 2014 and 2016. Saskatchewan’s also declined but by a lesser amount, while Ontario’s and B.C.’s increased.<sup>35</sup>

44. The 2017 Commission also referred to and accepted specific opinions expressed by Dahlby and Rothrock in regard to the significance of data illustrating the sudden increase in Alberta unemployment percentages in the 2015 to 2016 period and the modest improvement since then.<sup>36</sup>

#### *Adoption of optimistic forecasts*

45. Despite the above evidence, very notably, the 2017 Commission chose to accept what it described as the “more optimistic”<sup>37</sup> and the “less pessimistic”<sup>38</sup> opinions of McMillan over those of Dahlby in respect of the key issue of the degree of any recovery for the overall Alberta economy from the recent recession, and any corresponding improvement in the fiscal position of the government. The 2017 Commission’s related comments and conclusions in the 2017 Commission Report which confirm that to be the case are as follows.

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<sup>34</sup> 2017 Commission Report at 43.

<sup>35</sup> 2017 Commission Report at 44.

<sup>36</sup> 2017 Commission Report at 48–49.

<sup>37</sup> 2017 Commission Report at 42.

<sup>38</sup> 2017 Commission Report at 46.

46. The 2017 Commission specifically referred to Dahlby as being “more pessimistic”<sup>39</sup> and commented that he “...tended to overemphasize the magnitude of the negative changes.”<sup>40</sup> In one specific paragraph, the 2017 Commission stated the following:

Dr. Dahlby saw much uncertainty on the horizon. In his view the potentially negative factors outweighed the positive factors. He referred to the risks inherent in a potential U.S. – China trade war, rising interest rates, U.S. tax rates, the difficulty of getting pipelines approved, and uncertainty in the future price of oil. We found Dr. Dahlby’s concern for the future somewhat less optimistic than was expressed by the Province in its budget and economic update documents, and than in the opinion expressed by some of the banks and similar private sector commentators.<sup>41</sup>

47. Upon its further review, it is the view of the Lieutenant Governor in Council that the 2017 Commission, in considering certain important issues related to Criterion G, erred by relying too heavily on certain opinions of McMillan and not giving any or sufficient weight to the evidence based contrary or rebuttal opinions of Dahlby and Rothrock. Some further specifics of this follow.

48. Those “certain important issues” related to Criterion G included a determination as to the nature and degree of the initial severity of the negative impact of the sudden unexpected events of 2015 and 2016 on Alberta’s overall economic conditions and on the Government’s resultant fiscal position. As noted above, it is clear that the 2017 Commission accepted the overall consensus opinion of the experts that the events of 2015 and 2016 had an immediate severely negative effect on the Alberta economy as a whole and also a correspondingly sudden detrimental effect on the government’s fiscal position.

49. But those “certain important issues” also included an assessment of the existence of and significance of any enduring longer term negative effects of the events of 2015 and 2016 on the Alberta economy and on the government’s related fiscal position. In regard to that assessment there was obvious disagreement amongst the experts. As was noted above, the 2017 Commission expressly chose to accept what it called the “more optimistic” or “less pessimistic” opinions of MacMillan over those of Dahlby. The 2017 Commission thus concluded that there would likely be a relatively quick and significant recovery for the overall Alberta economy and a corresponding improvement in the fiscal position of the government.

#### *Failure to consider rebuttal points*

50. As noted above, the 2017 Commission expressly accepted as accurate and reliable, certain relevant data on key economic indicators (past, present and future) as provided by

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<sup>39</sup> 2017 Commission Report at 42.

<sup>40</sup> 2017 Commission Report at 45.

<sup>41</sup> It should be noted that the 2017 Commission Report did not provide specifics of what information it was referring to in regard to the “opinion expressed by some of the banks and similar private sector commentators.”

Rothrock. But the 2017 Commission in reaching its conclusions on those “certain important issues” related to Criterion G did not even refer to, much less consider, certain specific relevant opinions of Rothrock. Those included opinions which Rothrock raised in direct rebuttal to certain opinions expressed by MacMillan in his report (“Rothrock’s rebuttal points”). A brief summary of the opinions expressed by MacMillan and Rothrock’s rebuttal points follows.

51. McMillan did specifically indicate that the Alberta fiscal landscape had substantially deteriorated in the last few years. He stated that:

The deep recession and only gradual recovery has put the Alberta government in an awkward financial situation. Revenues dropped sharply, large deficits emerged, financial assets have deteriorated and debt has grown quickly.<sup>42</sup>

52. But McMillan also suggested that Alberta had “substantially recovered” from that “deep recession”. He specifically stated:

In a nutshell, **the unexpected changes in oil prices and the energy sector’s prospects sent Alberta into a two year recession** – a recession that severely impacted and disrupted the private and public sectors. **The economic turnaround in 2017 was substantial and has put Alberta back on a path of continuing though moderate growth.**<sup>43</sup> [Emphasis added]

53. Rothrock’s rebuttal points were made directly in response to those opinions stated by McMillan. Rothrock basically suggested McMillan had downplayed the relative severity and lasting impact of the Alberta recession. Specifically in regard to McMillan’s above noted opinion that “...the economic turnaround in 2017 was substantial,” Rothrock’s rebuttal points included the following comments:

**The characterization of Alberta's economic turnaround in 2017 as "substantial" fails to recognize the magnitude and duration of the recession in 2015 and 2016.** Although real GDP grew 4.9% in 2017, it fell over 7% in the previous two years and remained below pre-recession levels. **As discussed in the last three Alberta budgets, we are experiencing a prolonged economic recovery and real GDP is not expected to surpass pre-recession levels until 2019.**<sup>44</sup>

**...Further, due to lower the lower trajectory for oil prices, Alberta's growth is projected to be lower than before.** As noted on the first page of our August 30, 2018 Alberta Economy report, "Over the medium term (2020–2021), growth is expected to moderate to around 2.5%. This is lower than the average of around

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<sup>42</sup> APJA Submission to the 2017 Commission, Tab 14 [McMillan Report] at 30.

<sup>43</sup> McMillan Report at 1.

<sup>44</sup> Minister’s Submission to the 2017 Commission, Tab 18 [Rothrock Rebuttal Report] at 1.

3.5% over the 10-year period prior to the 2015–16 recession." Business investment is also lagging. In particular, investment remains weak outside of the conventional oil sector and is only forecast to moderately improve over the next few years. [Emphasis added]

54. Furthermore, Rothrock's rebuttal points included the following comments, made specifically in response to certain of McMillan's stated opinions suggesting that the negative effects of the recent Alberta recession were not much worse than those from previous ones:

**[Dr. McMillan's] conclusion that Alberta's current fiscal position is "not entirely new" understates the significance of the recent and continuing unfavourable provincial fiscal situation.**

As noted in the second paragraph on page 42 of [Dr. McMillan's Report], Alberta is "in the fourth year of low Resource revenue and with little prospect of significant improvement (i.e. looking at low resource Revenues in the long term)." In addition, as noted in the last paragraph on page 34 of [Dr. McMillan's Report], **Alberta's "projected nadir of net financial assets of about -90 percent" (of total provincial revenue) "is well below the earlier low of -49 percent." By this important measure, as evidenced in Figure 23 on page 34 of (Dr. McMillan's Report), Alberta's projected net financial asset position is nearly twice as bad as during the previous major low in the 1990s.**<sup>45</sup> [Emphasis Added.]

#### Consideration of subsequent economic statements

55. McMillan's stated opinion that Alberta's economy had "substantially recovered" from the 2015–2016 recession is also contrary to certain concerns raised in the Second and Third Quarter Fiscal Update and Economic Statements ("Updates"), which the 2017 Commission stated it considered.<sup>46</sup> These Updates show that pipeline capacity restraints and the low price of oil (concerns raised in Dr. Dahlby's Report) *continue* to have a real negative impact on Alberta's economy and fiscal situation.

56. The 2017 Commission refers to Alberta's Updates, stating:

The overall theme of these documents is that "The Recovery Remains on Track" despite the depth of the downturn. However, we have also noted the ongoing cautions raised by the economists before us, and the Treasurer in his reports.<sup>47</sup>

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<sup>45</sup> Rothrock Rebuttal Report at 3

<sup>46</sup> 2017 Commission Report at 40.

<sup>47</sup> 2017 Commission Report at 40–42.

57. This assessment of Alberta's Updates fails to note the *current* negative impacts on Alberta's economy and fiscal situation, regardless of cautions regarding the future. Some of these current negative impacts on Alberta's economy and fiscal situation highlighted by these reports are:

- (1) In the Third Quarter Fiscal Update and Economic Statement, Treasury Board and Finance noted the reality that:

In the last quarter of 2018, momentum in Alberta's economy weakened due to concerns over slowing demand, exacerbated by continued global supply growth. Alberta producers, facing market access issues from transportation bottlenecks and pipeline delays, saw severe discounts for Alberta crudes.<sup>48</sup>

- (2) The Third Quarter Update further stated that, "Real GDP growth is forecast to slow to 1.6% in 2019, down from 2.5% at Budget."<sup>49</sup>

- (3) The Third Quarter Update also noted that:

The decline in global oil prices and market access issues are weighing on corporate profits and investor sentiment. Drilling activity in the province has weakened since November after growing around 7% through the first 10 months of 2018. This weakness is expected to continue through the first half of 2019 until rail capacity increases and Enbridge's Line 3 comes on line in the latter part of the year.<sup>50</sup>

58. The Third Quarter Fiscal Update and Economic Statement also contained an addendum entitled "Path to Balance". This Path to Balance document provided the following highlights of where the Alberta economy and fiscal situation are at in their recovery. While the Path to Balance notes that the recovery is continuing, it contains several noteworthy areas where Alberta's economy and fiscal situation is still behind, or at least not ahead of, where it was prior to the most recent recession. These areas are:

- (1) **Market access challenges:** "Last year, Alberta's economic momentum was interrupted by severe market access challenges, a failure of successive governments in Ottawa."<sup>51</sup>

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<sup>48</sup> Third Quarter Fiscal Update and Economic Statement at 5.

<sup>49</sup> Third Quarter Fiscal Update and Economic Statement at 14.

<sup>50</sup> Third Quarter Fiscal Update and Economic Statement at 14.

<sup>51</sup> Third Quarter Fiscal Update and Economic Statement at 21.

- (2) **Low oil prices:** “The oil price collapse of 2014–2015 was the deepest and most prolonged in Canadian history. WTI oil prices fell more than 70% from their peak levels, and are still only half of where they were in 2014.”<sup>52</sup>
- (3) **Energy investment:** “[...] while energy investment is expected to improve over the medium term, it will still be significantly lower than 2014 levels due to the weaker outlook for oil prices and ongoing market access issues.”<sup>53</sup>
- (4) **Resource revenue:** “In 2019–20, [resource revenues] will be around 60% of 2014–15 levels. Even as oil prices improve and oil production continues to increase, the share of resource revenue in total revenue will remain well below historical norms.”<sup>54</sup>
- (5) **Nominal GDP:** “Nominal GDP, the broadest measure of income, fell \$75 billion (or 20%) between 2014 and 2016, and is not expected to return to 2014 levels until 2021.”<sup>55</sup>

59. The 2017 Commission appears to have not taken these current, not just cautionary, economic and fiscal conditions into account in its analysis of Criterion G. The Lieutenant Governor in Council concludes that this error caused the 2017 Commission to have a more optimistic view of the Alberta economic and fiscal situation than was warranted in the circumstances.

#### *Overall treatment of economic evidence*

60. In summary, the Lieutenant Governor in Council is left to conclude that the 2017 Commission seriously erred in regard to its analysis of matters relevant to Criterion G. As noted above, the 2017 Commission did accept the overall consensus opinion of the experts that the events of 2015 and 2016 had an immediate severely negative effect on the Alberta economy as a whole and also a correspondingly sudden detrimental effect on the government’s fiscal position. However, as also noted above, the 2017 Commission, inexplicably and erroneously, either simply disregarded Rothrock’s rebuttal points altogether or gave her stated opinions therein very little weight. The 2017 Commission also appears to have not considered the evidence of the ongoing economic and fiscal challenges faced by Alberta as highlighted in the Third Quarter Fiscal Update and Economic Situation. The Lieutenant Governor in Council is left to further surmise that such error in turn resulted in or served to bolster the 2017 Commission’s evident preference for what it referred to as the “less pessimistic” assessment of McMillan over that of Dahlby in respect to the issues of the degree of the severity of and the duration of the damage to the Alberta economy and the fiscal position of the government. On that basis the 2017 Commission then proceeded to make its recommendations based on an assessment which

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<sup>52</sup> Third Quarter Fiscal Update and Economic Statement at 22.

<sup>53</sup> Third Quarter Fiscal Update and Economic Statement at 24.

<sup>54</sup> Third Quarter Fiscal Update and Economic Statement at 28.

<sup>55</sup> Third Quarter Fiscal Update and Economic Statement at 28.

significantly understated both the severity of and the duration of the damage to the Alberta economy and the fiscal position of the government.

**C. The 2017 Commission failed to give proper weight to the level of increases or decreases provided to other programs and persons funded by the Government.**

61. The Lieutenant Governor in Council has determined that the 2017 Commission erred by failing to give appropriate weight to the evidence before them with regard to the level of increases or decreases provided to other persons and programs funded by the Government, contrary to Criterion J.<sup>56</sup>

*Judges should shoulder their share of the burden*

62. The Supreme Court of Canada has emphasized the principle that financial security for the courts demands:

...the courts both be free and appear to be free from political interference through economic manipulation by the other branches of government, and not become entangled in the politics of remuneration from the public purse.<sup>57</sup>

63. Despite that, increases or decreases in the levels of compensation provided to other Government-funded persons or programs is a relevant consideration when determining adequate compensation for judicial officers and therefore is included as Criterion J in the Regulation.

64. In recognition of the difficult task governments have when allocating public resources between competing priorities, the Supreme Court of Canada has stated that including judges in across-the-board measures affecting substantially every person paid from the public purse would be *prima facie* rational, as such measures are connected with the government's overall fiscal priorities aimed at furthering the larger public interest.<sup>58</sup> The guarantee of a minimum acceptable level of judicial remuneration should not be used to shield judges from the effects of deficit reduction.<sup>59</sup>

65. In the 2017 Commission Report under the heading "Guiding Principles", the 2017 Commission summarizes the law and quotes from the Supreme Court of Canada *PEI Reference* case as follows:

**The authority to set judicial compensation rests with government, and it is open to governments to change or freeze judges' salaries either as part of a global measure,**

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<sup>56</sup> S. 13(j) of the Regulation requires the Commission to take into consideration "the level of increases or decreases, or both, provided to other programs and persons funded by the Government".

<sup>57</sup> *Reference re Remuneration of Judges of the Provincial Court (PEI)*, [1997] 3 SCR 3 [*PEI Reference*] at para 131.

<sup>58</sup> *PEI Reference* at para 184.

<sup>59</sup> *PEI Reference* at para 196.

**or on their own**, so long as the government has gone through the commission process. Measures that depart from the recommendations of commissions must be justified as rational. There is nothing inherently irrational in including judges in across-the-board measures, since

**[n]othing would be more damaging to the reputation of the judiciary and the administration of justice than a perception that judges were not shouldering their share of the burden in difficult economic times.**<sup>60</sup> [Emphasis added.]

Evidence of across-the-board restraint measures

66. A substantial amount of evidence was presented to show that the Minister's salary position was consistent with economic measures implemented in the public interest by Government in recent years as a response to the economic downturn, including an overarching approach to restraining compensation provided to persons and programs under its control.

67. Evidence provided included a report prepared by Alberta Labour<sup>61</sup> which summarized the changes in remuneration of public service unions. The report showed that many of the public service unions had entered into agreements which provided no wage increases for 2017-2018 and 2018-2019, and mandated future negotiation (and arbitration if necessary) with regard to wages for 2019-2020.

68. Evidence was also presented to the 2017 Commission about wage restraint measures imposed on non-union Government employees. The evidence presented was that Deputy Ministers, senior officials, legal officers, managers as well as employees opted out or excluded from unions, have had their salaries frozen since 2015, with the freeze expected to last until at least September 30, 2019.<sup>62</sup>

69. Information with regard to the *Reform of Agencies Boards and Commissions Compensation Act* (2016 c. R-8.5) and the *Salary Restraint Regulation* (AR 6/2018) which established a framework to significantly reign in compensation for public agencies was also provided.<sup>63</sup>

70. The APJA did not take issue with the specific evidence presented by the Minister, but submitted numerous news articles focused on non-salary gains obtained in bargaining by select public sector unions as well as incremental experience-based increases some union members continue to receive despite the freeze of salary grids.

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<sup>60</sup> 2017 Commission Report at 9.

<sup>61</sup> Minister's Submission to the 2017 Commission, Tab 26 [Thompson Report].

<sup>62</sup> Minister's Rebuttal Submission to the 2017 Commission, Tab 3 and Joint Book of Facts and Exhibits, Tab 8.

<sup>63</sup> Minister's Submission to the 2017 Commission, Tabs 27, 28, 29 and 31.

71. The 2017 Commission responded to the evidence presented by stating that the Minister had failed to justify why judges should be subject to compensation restraint:

Most importantly, [the Minister's position] fails to reflect the fact that courts are an independent branch of government, and that protection of judicial independence, including financial security, is a central underlying principle of the Canadian constitution. While Alberta Provincial Court Judges and Masters are not immunized from the consequences of shifts in the Alberta economy, they should not be required to experience effective declines in the value of their salaries in the absence of justification.<sup>64</sup>

72. As discussed further below, the Lieutenant Governor in Council is of the opinion that the 2017 Commission concluded there was no justification to apply the Government's fiscal compensation restraint policy to the judges because the 2017 Commission erred by:

- (1) accepting the APJA's contention that there were political motives behind the Minister's salary position;
- (2) minimizing the importance of Criterion J based on an incorrect conclusion that it is inherently political;
- (3) placing too much emphasis on the effective decline in judicial salaries that would result from the Minister's position;
- (4) focusing on unions to the exclusion of others funded by Government;
- (5) giving too much weight to incremental experience-based increases some union members continue to receive despite their salary grid being frozen;
- (6) giving too much weight to non-salary concessions some unions were able to obtain during the bargaining process; and
- (7) criticizing the lack of information about compensation for others funded by Government for the 2019-2020 and 2020-2021 years.

### *Inferred political motivation*

73. The APJA argued that the Minister's position that judges' salaries should not be increased during the mandate period was politically motivated. Evidence of that motivation, according to the APJA's submissions, could be found in the fact that, on June 18, 2018, the Minister presented a Proposed Joint Submission to the APJA<sup>65</sup> which would have frozen judicial salary for the first two years of the 2017 Commission's mandate and adjourned the issue of judicial salary for the last two years to a Commission hearing to be held in the fall of 2019 or later.<sup>66</sup>

74. The APJA argued that the economic evidence did not support the Minister's stated reason for the Proposed Joint Submission which was, in consideration of the volatile nature of the economic circumstances, to allow the parties and the 2017 Commission a chance to access

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<sup>64</sup> 2017 Commission Report at 56.

<sup>65</sup> APJA Reply Submission to the 2017 Commission at para 144.

<sup>66</sup> Minister's Submission to the 2017 Commission at para 325.

updated predictive economic data and other information necessary to determine judicial salaries for the last two years.<sup>67</sup> The APJA baldly asserted that:

The Government's proposed joint submission left no room for misunderstanding that its primary concern is to avoid any potential impact on its dealings with public sector employees and to ensure it can suggest to voters that it has been successful in holding the line on wages paid by the public purse.<sup>68</sup>

75. Similarly, the APJA argued against a full consideration of Criterion J, insisting that the levels of increases provided to other programs or persons funded by the Government must be viewed solely as evidence of the willingness of the Government to pay based on its own political assessment of its financial position.<sup>69</sup>

76. The following statement in the 2017 Commission Report indicates that the 2017 Commission agreed with the APJA's assertion of political motivation despite the lack of evidence to support it:

The purpose of the listed criteria is to illuminate factors relevant to fair and equitable compensation for Alberta's Provincial Court Judges. However, at times, submissions on behalf of the Minister implied that the focus was more on how the compensation recommended for Provincial Court Judges might influence, and further exacerbate, Alberta's economic problems and the Province's fiscal position.

77. The 2017 Commission erred in concluding that the Minister's salary position was based on an unsubstantiated political motivation, and consequently erred by giving the evidence related to Criterion J diminished weight. Rather, the Minister's salary position was based on the principle set by the Supreme Court of Canada, that including judges in across-the-board fiscal restraint measures affecting substantially every person paid from the public purse would be *prima facie* rational.

*Emphasis on effective declines in judicial compensation*

78. In its Report, the 2017 Commission placed a great deal of emphasis on the fact that the Minister's salary position would result in an effective decline in the Judges' compensation as a result of inflation, as can be seen from the way in which the 2017 Commission restated their mandate:

Ours is a narrow question which is essentially this: given all the criteria, should the 160 or so judges and Masters see the buying power of their salaries erode each year? Should they maintain their relative buying power, keeping abreast of inflation? Or should they

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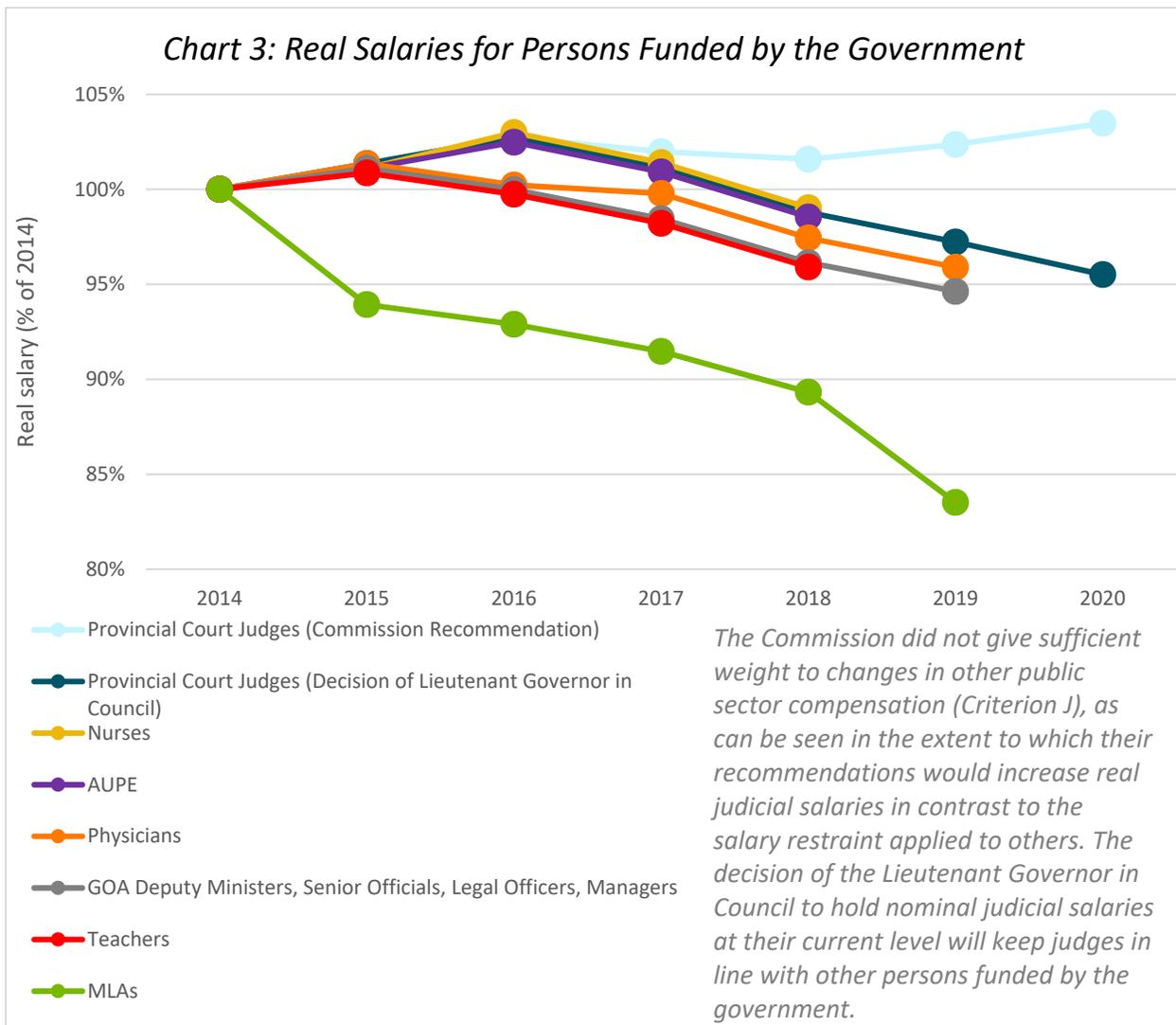
<sup>67</sup> Minister's Submission to the 2017 Commission at para 330.

<sup>68</sup> APJA Reply Submission to the 2017 Commission at para 146.

<sup>69</sup> APJA Submission to the 2017 Commission at para 243.

advance somewhat beyond the rate of inflation? The Minister, asking that we recommend four years at 0%, advocates the first outcome – erosion of the buying power of judges’ and Masters’ salaries.<sup>70</sup>

79. The 2017 Commission seems not to have considered the evidence that, as a result of Government’s overarching approach to restraining compensation, others funded by the Government were also experiencing an effective decline in their compensation. Chart 3 is a comparison of the real salaries for some key Government funded employee groups with the real salaries the judges would receive if the 2017 Commission’s salary recommendation was accepted and their real salaries pursuant to the decision of the Lieutenant Governor in Council.<sup>71</sup> (The recent decision that compensation for MLAs decrease by 5% has been included in Chart 3.)



<sup>70</sup> 2017 Commission Report at 33.

<sup>71</sup> The salary information for this chart was in evidence before the Commission except for the information related to MLAs which is new (Alberta Government News Release August 06, 2019 “Leading by example on pay for Premier, MLAs: Premier Kenney”)

80. As can be seen from Chart 3, the level of decline in real salaries for the judges based on the decision of the Lieutenant Governor in Council (dark blue line) is very similar to the decline experienced by others funded by Government. However, if the judges' salaries were increased as recommended by the 2017 Commission (light blue line), their real salaries would have them in a much better position than others funded by Government.

81. The 2017 Commission's undue emphasis on the effective decline in judicial compensation that would result from the Minister's salary position is most notably demonstrated by its conclusion that increases in judicial salaries were necessary to avoid overall wage erosion<sup>72</sup> despite the fact that the APJA conceded before the 2017 Commission that the judges' salaries have not reached and are not approaching the constitutionally guaranteed minimum level.<sup>73</sup>

*Focus on unions, experience-based grid movement, and non-salary gains*

82. The APJA's submissions with regard to Criterion J focused on the Government's agreements with a few of the larger unions: the Alberta Teachers Association (ATA); the United Nurses of Alberta (UNA); the Health Sciences Association of Alberta (HSAA); and the Alberta Union of Provincial Employees (AUPE). This is far from an exhaustive list of the public sector unions that the Government negotiates with, as can be seen from the evidence the Minister provided.

83. Only passing mention was made in the APJA submissions of non-union Government employees. The APJA argued that evidence regarding the pay of non-union Government employees should be disregarded as being inherently political:

... the Government points to the salary freezes it has imposed on non-unionized employees who do not engage in collective bargaining. Pay for this group of employees is highly political and is often used as a tool to assist the Government in its bargaining with unionized employees. Unlike for judges, there is no constitutional requirement that compensation for this group be determined based on objective criteria.<sup>74</sup>

84. A review of the 2017 Commission Report indicates that the 2017 Commission adopted the APJA's focus on specific unions to the exclusion of other persons and programs funded by the Government. For example, the 2017 Commission Report stated:

The Minister cited public sector wage settlements with its major trade unions for 0% for the first two years of this Commission's term as justification for 0% increases for Provincial Court Judges and Masters for all four years of this Commission's term.<sup>75</sup>

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<sup>72</sup> 2017 Commission Report at 55.

<sup>73</sup> APJA Submission to the 2017 Commission at para 146.

<sup>74</sup> APJA Reply Submission to the 2017 Commission at para 74.

<sup>75</sup> 2017 Commission Report at 53.

85. In fact, as mentioned previously, the Minister provided evidence with regard to a large number of public sector unions, non-unionized employees as well as others funded by Government as proof that the Government had implemented an overarching approach to restraining compensation provided to persons and programs under its control.

86. This emphasis on compensation paid to select public service unions seems to have led the 2017 Commission to assign an excessive amount of weight to incremental experience-based grid movement and non-salary gains obtained by some unions. While it is correct that some union employees continued to move through their grids even while under a salary freeze and some obtained non-salary concessions during negotiations, those limited benefits do not provide adequate justification for not including the judges in the across-the-board compensation restraint initiative.

87. The APJA argued that because some union members were able to move through their salary grid, it is not correct to say that the unions' wages were frozen, and by extension, they argued, it is not correct to say that the Government implemented an across-the-board salary restraint policy. A careful examination of the evidence reveals that the APJA's arguments about this type of grid movement should not have been given so much weight.

88. The evidence makes it clear that, as part of the Government's overall economic restraint of public sector compensation, in-range movement has been suspended along with merit-based and general increases for non-union employees including Deputy Ministers, Assistant Deputy Ministers, Senior Officials, Legal Officers and managers, until at least September 30, 2019.<sup>76</sup>

89. In addition, not all union members experienced incremental experience grid movement, as borne out by the evidence. As the Minister's submissions explained, whether a particular union member would benefit from grid movement is dependant on their respective union agreement, but it is consistent throughout the union agreements that it is only junior union members that benefit from incremental grid movement.

90. Although the APJA did not bring any evidence forward as to the value of grid movement, one of the articles provided includes an ATA grid as an example of how this kind of grid movement works. That grid shows that that once a teacher has 10 years of experience, the teacher will receive no further increment experience grid movement.

91. This approach recognizes that junior union members' capacity to perform their jobs increases as they gain more experience. Also consistent across the union agreements is the fact that this type of grid movement is not automatic. If a particular union member does not show the development expected of them, they will not receive the incremental increase. Once an employee reaches the last incremental step within their job classification, they will not receive

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<sup>76</sup> Minister's Rebuttal Submission to the 2017 Commission, Tab 3

any further incremental experience increases. When their salary grid is frozen, the only way an employee who has reached the top of their classification could earn more money would be to obtain a job with a different classification.

92. It is also important to recognize that, when an individual is hired, an assessment of the individual's experience determines at which step of the salary grid that person will begin. Therefore, it is years of experience rather than years as an employee in a particular position or with a particular employer that determines how quickly the employee will reach the top of their classification grid. An experienced employee coming into the job could be placed at the top of their classification grid and therefore never experience incremental experience grid movement.

93. The APJA also argued that it is not appropriate to compare a freeze on judicial salaries with a salary grid freeze for union members because the judges are paid the same whether they have just been appointed or have been judges for many years.

94. However, if you consider the fact that, in order for a lawyer to be appointed as a judge or a master, they must already have gained significant legal experience (a minimum of 10 years in order to be considered for a judicial appointment), it is clear that the appropriate comparison is not to a junior union member just beginning their career, but rather to an experienced union member whose experience places them at the top of their classification such that they will not benefit from any incremental experience-based increases.

95. Focusing the review of the level of increases to other persons funded by the Government on specific public service unions also afforded the APJA the opportunity to place an undue amount of emphasis on the fact that some of the unions were able to negotiate non-salary gains, as demonstrated here:

At first blush, the Government's proposed joint submission appears to mirror the position it has taken in collective bargaining with public sector employees. However, there is a critical distinction. Unionized groups were able to **negotiate significant and variable incentives in exchange for agreeing to a 0% general wage increase for two years**, followed by the right to access interest arbitration to determine wage adjustments for the third year if the parties could not agree. **Many of the incentives or other benefits negotiated by the public sector unions are not relevant or applicable to judges** (nor are they contemplated by the Government's proposal). To put it bluntly, unlike public sector employees, **judges were offered no carrots, only the stick.**<sup>77</sup> [Emphasis added.]

96. The APJA submission also stated:<sup>78</sup>

From the information available, **it is clear that the parties to these various negotiations chose to focus on items other than general wage increases, at least for the first two years of the collective agreement.** [Emphasis added.]

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<sup>77</sup> APJA Reply Submission to the 2017 JCC at para 145.

<sup>78</sup> APJA Submission to the 2017 Commission at para 321.

97. However, it is clear, for example from the article about the AUPE agreement that the APJA provided, that it wasn't that the unions chose to focus on items other than wage increases, the unions, in this case the AUPE, realized that, when dealing with an employer who was absolutely adamant that there would be no wage increases, the best the union could do was to negotiate for non-salary gains.<sup>79</sup>

98. Despite the APJA's emphasis on the non-salary gains obtained by some unions during bargaining, they made no effort to examine the value on those non-salary gains. Table 2 below shows examples of the non-salary gains the APJA emphasized so strongly.

*Table 2: Examples of non-salary gains<sup>80</sup>*

<b>Group</b>	<b>Description of Non-Salary Gain(s)</b>
AUPE – Government Services AUPE – Alberta Health General Support Services	<ul style="list-style-type: none"> <li>• Negotiations for 2019-2020 wages to start on January 15, 2019, and if no agreement, referral to interest arbitration, with a hearing by June 30, 2019;</li> <li>• Health spending account to increase to \$900 on April 1, 2019;</li> <li>• No involuntary loss of employment for permanent employees until March 30, 2020;</li> <li>• Obligations on the Employer to justify contracting out work; and</li> <li>• Creation of a committee to provide a process for employees to address workload issues and concerns with the Employer.</li> </ul>
Health Sciences Association of Alberta (HSAA)	<ul style="list-style-type: none"> <li>• Negotiations for 2019-2020 wages to start on February 15, 2019, and if no agreement, referral to interest arbitration with a hearing by November 30, 2019;</li> <li>• Minor updates to employee benefits; and</li> <li>• Additional scheduling flexibility.</li> </ul>
United Nurses of Alberta (UNA)	<ul style="list-style-type: none"> <li>• Negotiations for 2019-2020 wages, and if no agreement, referral to interest arbitration;</li> <li>• No involuntary layoffs or involuntary reductions in hours of work;</li> <li>• Mechanism for dealing with concerns of patient care;</li> <li>• Limits on shift schedules; and</li> <li>• Improvement in language affecting leaves.</li> </ul>
Alberta Teachers' Association (ATA)	<ul style="list-style-type: none"> <li>• Caps on instructional and assignable time;</li> <li>• Teacher autonomy over professional growth plans and, in some cases, a small increase in professional development funds;</li> <li>• Provisions that if the UNA or AUPE secure pay increases for 2019-2020, the ATA would receive the same increases; and</li> <li>• Classroom Improvement Funds distributed based on locally established priorities.</li> </ul>

99. The APJA acknowledged that many of the non-salary gains obtained by unions are not relevant to judges, but failed to acknowledge that the reason they are not relevant is because the judges are in a highly privileged position with regard to non-salary compensation and benefits.

100. As can be seen from Table 2, with the exception of the wage re-opener provisions, the non-salary gains obtained by these unions are not relevant to the judges because of their already enviable positions. For example, the judges do not have to worry about involuntary layoffs or

<sup>79</sup> APJA Submission to the 2017 Commission at Tab 24.

<sup>80</sup> Unless otherwise noted, the information in Table 2 was evidence before the 2017 Commission.

fighting for increased professional autonomy. With regard to the wage re-opener provisions, the judges arguably have a superior wage determination process through the independent compensation commission process.

101. Unfortunately, it appears that the 2017 Commission failed to appreciate how small the non-salary gains really were and that they dealt with issues that are not of concern to judges. Interestingly, the 2017 Commission also seems to have not taken into consideration the fact that it had recommended a non-salary gain for the judges in the form of an increase to their individual annual professional development allowances from \$3,750 to \$4,500 as well as the change in the age of eligibility for part-time service from the age of 60 to 55, both of which were requested by the APJA and agreed to by the Minister before the hearing.

102. The 2017 Commission Report makes it clear that the 2017 Commission accepted the APJA arguments without carefully examining the evidence presented regarding incremental experience-based grid movement and non-salary gains:

Though the Minister emphasized the zero percent increases for two years that have been negotiated with certain public sector unions, or imposed on managerial employees, and argued for no increases in judicial salaries for the four years of our mandate, we reject the Minister's position. **It does not reflect the true outcomes of public sector bargaining for the employees covered by the collective agreements in question.**<sup>81</sup> [Emphasis added.]

*Lack of compensation information for the last two years*

103. The final reason why the 2017 Commission concluded that the Minister had not proven that across-the-board salary restraint measures which the judges should be included in had been implemented by Government, was that the Minister was unable to provide evidence as to the levels of compensation paid to others funded by Government for the last two years of the mandate period:<sup>82</sup>

... the Minister did not put forward any collective bargaining examples covering the last two years of the term. Indeed, all the major agreements the Minister referred to included wage reopener clauses for their third year, agreed upon by the government. When pressed for justification for the freeze for judges and Masters in years three and four, the Minister fell back on the broader fiscal and economic arguments discussed above.

104. As noted above, many of the public sector union collective agreements included clauses that provided for postponed negotiation, and arbitration if negotiation was unsuccessful, for their members' wages for 2019-2020. Therefore, at the time of the 2017 Commission hearing, there was no evidence available about what would happen with those wages.

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<sup>81</sup> 2017 Commission Report at 56.

<sup>82</sup> 2017 Commission Report at 53.

105. As can be seen from the Alberta Labour report referenced above, there is a range of dates when the various public sector union agreements begin and end. For example, the vast majority of the unions are currently bargaining with regard to wages for 2020-2021, which would be the case no matter what had been agreed upon with regard to wages for 2019-2020.

106. In addition, no announcements had been made with regard to what would happen with the wages of non-union employees or others funded by Government. Therefore, it was not that the Minister chose not to provide that evidence, the evidence simply was not available to be provided.

107. In any event, as can be seen from Chart 3, although there is a limited amount of information available about wages for persons funded by Government in 2019-2020 and 2020-2021, the trend is very clear. As discussed above, the level of decline in real salaries for the judges based on the decision of the Lieutenant Governor in Council (dark blue line) is very similar to the decline experienced by others funded by Government, but if the judges' salaries were increased as recommended by the 2017 Commission (light blue line), their real salaries would place them in a far superior position than others funded by Government.

**D. The 2017 Commission reached an unsupported conclusion that maintaining the current judicial salary would endanger the financial security of judges.**

108. The Lieutenant Governor in Council has determined that the 2017 Commission erred by reaching an unsupported conclusion that maintaining the current judicial salary would endanger the financial security of judges.

109. In the *PEI Reference*, the Supreme Court of Canada identified three requirements for the financial security of judges. The third is that salary may not fall below a minimum level:

Third, and finally, any reductions to judicial remuneration, including *de facto* reductions through the erosion of judicial salaries by inflation, cannot take those salaries below a basic minimum level of remuneration which is required for the office of a judge. Public confidence in the independence of the judiciary would be undermined if judges were paid at such a low rate that they could be perceived as susceptible to political pressure through economic manipulation, as is witnessed in many countries.<sup>83</sup>

110. The Lieutenant Governor in Council acknowledges that the overall role of the 2017 Commission is to recommend an appropriate, rather than minimal, level of judicial compensation.<sup>84</sup> However, for the criterion of judicial independence, this minimum salary level is the relevant consideration. This is particularly true when determining whether maintaining

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<sup>83</sup> *PEI Reference* at para 135.

<sup>84</sup> *Bodner* at para 67.

nominal salary, resulting in a decrease in real salary due to inflation, would affect public confidence in the independence of the judiciary.

111. In rejecting the proposal that the current judicial salary is appropriate through March 31, 2021, the 2017 Commission stated:

Most importantly, it fails to reflect the fact that courts are an independent branch of government, and that protection of judicial independence, including financial security, is a central underlying principle of the Canadian constitution.<sup>85</sup>

112. It is unclear why concern over judicial independence was the most important factor that led the 2017 Commission to reject the appropriateness of the current judicial salary. Nothing in the 2017 Commission Report suggests that Alberta judges, if paid at their current salary through 2021, would fall below a level where they would be perceived to be susceptible to economic manipulation. On the contrary, the APJA acknowledged that Alberta judges' salaries are not at or approaching that level.<sup>86</sup>

113. The error made by the 2017 Commission is similar to one identified by the Supreme Court of Canada in its review of the 2001 New Brunswick Commission:

In rejecting the Commission's salary recommendations, the Government also relies on its assessment that the judges' existing salary is adequate. This argument also formed part of the Government's submissions to the 2001 Commission. In its report, however, the Commission dismissed this argument on the ground that to accept it would lead to a salary freeze in violation of the principles stated in the *Reference*. **In taking this position, the Commission committed an error of law. The *Reference* did not make salary increases mandatory.**<sup>87</sup> [Emphasis added]

114. The Lieutenant Governor in Council concludes that the 2017 Commission's assumption that maintaining the current salary would negatively affect judicial independence was incorrect, and that the rejection of the current salary based on that assumption was in error. Alberta judges were the highest paid provincial court judges in the country in 2016–2017 and, if they remain at that salary level, they will likely continue to be among the highest paid through March 31, 2021.

#### **E. The 2017 Commission did not consider evidence of relative tax burden when comparing total judicial compensation between provinces.**

115. In comparing judicial salaries to other provinces, the APJA proposed, and the 2017 Commission adopted, a "total compensation" approach. However, the approach adopted by the 2017 Commission did not consider the fact that Alberta judges enjoy a significant relative tax

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<sup>85</sup> 2017 Commission Report at 56.

<sup>86</sup> APJA Submission to the 2017 Commission at para 146.

<sup>87</sup> *Bodner* at para 76.

advantage. Although the APJA’s economic expert, Dr. McMillian, acknowledged that such a tax advantage does certainly exist, it was not considered in the APJA’s total compensation argument.<sup>88</sup>

116. The Minister obtained an after tax income comparison from the Tax Policy Branch of Alberta Treasury Board and Finance.<sup>89</sup> That analysis concluded that, in order to receive the same after tax income that Alberta judges and masters receive at their 2016-2017 salary rate, judges in other jurisdictions would need the following salary increases:<sup>90</sup>

*Table 3: Value of Alberta Judges’ Relative Tax Advantage*

Jurisdiction	\$ increase to equate to Alberta after tax income
Ontario	\$29,455
British Columbia	\$21,167
Saskatchewan	\$2,684

117. The 2017 Commission accepted the APJA’s position that total compensation should be considered and specifically mentioned that pension benefits and vacation entitlements should be taken into account. However, the 2017 Commission Report did not even address the Minister’s argument that an analysis of total compensation would require consideration of the relative tax burden of judges in the various jurisdictions.<sup>91</sup>

118. The 2017 Commission concluded that increases to the salary of Alberta judges and masters were required:

... to maintain some semblance of the historic relative position of Alberta judges with respect to those in other jurisdictions, especially taking into account total compensation.<sup>92</sup>

119. The Lieutenant Governor in Council concludes that the 2017 Commission’s failure to consider the relative tax burden as part of the total compensation analysis contributed to the 2017 Commission’s flawed salary recommendation.

**F. New economic and fiscal evidence available since the release of the 2017 Commission Report justifies a departure from the 2017 Commission salary recommendation.**

120. In *Bodner*, the Supreme Court of Canada stated that:

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<sup>88</sup> Minister’s Submission to the 2017 Commission at para 311.

<sup>89</sup> Minister’s Submission to the 2017 Commission, Tab 32.

<sup>90</sup> Minister’s Submission to the 2017 Commission at para 320.

<sup>91</sup> 2017 Commission Report at 27.

<sup>92</sup> 2017 Commission Report at 55.

If a new fact or circumstance arises after the release of the commission's report, the government may rely on that fact or circumstance in its reasons for varying the commission's recommendations.<sup>93</sup>

*New economic and fiscal evidence*

121. The Lieutenant Governor in Council has determined that new facts and circumstances have arisen since the release of the 2017 Commission Report with reference to the economic and fiscal criteria which justify a departure from the 2017 Commission's recommendations.

122. As noted above, the economic and fiscal criteria are:

- (f) increases and decreases, as applicable, in the Alberta real primary household income per capita;
- (g) the need to provide fair and reasonable compensation in light of prevailing economic conditions in Alberta and the overall state of the economy, including the financial position of the Government; and
- (h) the Alberta cost of living index and the position of the judges relative to its increases or decreases, or both.

123. Since the release of the 2017 Commission Report, many of the indicators considered under the economic and fiscal criteria have moved in a negative direction as they concern Alberta's economic outlook. In spite of some hopeful signs with regard to pipeline approvals, access to markets continues to negatively impact the resource sector and the price Alberta gets for its oil.

124. With respect to Criterion F, at the time of the hearing, the Alberta real primary household income per capita projections for growth for the years 2019 and 2020 were 1.3% and 1.2% respectively.<sup>94</sup> Updated figures for Alberta real primary household income per capita were not available or cited in the 2017 Commission Report in May 2019. The Alberta government's projections for growth in Alberta real primary household income per capita for 2019 has now been adjusted downward to 0.7%, with the projection for 2020 at 1.3%.<sup>95</sup>

125. With respect to Criterion G and Criterion H, some of the key economic indicators considered there have also seen a negative adjustment since the date of the 2017 Commission Report.

126. At the time of the release of the 2017 Commission Report, the most up-to-date figures available were from the 2018-2019 Third Quarter Fiscal Update and Economic Update. At that time, real GDP growth for 2019 was projected to be 1.6%, with somewhat higher figures for the following 2 years.

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<sup>93</sup> *Bodner* at para 26.

<sup>94</sup> Minister's Submission to the 2017 Commission, Tab 17.

<sup>95</sup> See attached Table 6 for supporting economic data.

127. Publicly available updated forecasts show a weaker picture for 2019 than was available in May 2019 when the 2017 Commission Report was released. Table 4, below, compares the real GDP growth projections of the various forecasters at three points in time: Q2-3 2018 (near to the time of the 2017 Commission hearings), Q1 2019 (near to the time of the release of the 2017 Commission Report) and Q2 2019 (closest to present).

*Table 4: Real GDP (2019 Forecast), forecasters with updated information*

Institution	Q2-Q3 2018		Q1 2019		Q2 2019	
	Date of Forecast Publication	2019F	Date of Forecast Publication	2019F	Date of Forecast Publication	2019F
National Bank of Canada	Dec-18	1.8%	May-19	1.5%	Jul/Aug-19	1.2%
BMO	Dec-18	1.2%	May-19	1.3%	Aug-19	1.3%
CIBC	Oct-18	1.9%	May-19	0.6%	Jul-19	0.6%
Scotia	Oct-18	2.5%	May-19	1.2%	Jul-19	0.5%
RBC	Sep-18	2.5%	Mar-19	1.3%	Jun-19	0.6%
TD	Sep-18	2.0%	Mar-19	0.5%	Jun-19	0.5%
Conference Board of Canada	Nov-18	2.2%	May-19	-0.1%	Aug-19	-0.8%
<b>Average</b>	-	<b>2.0%</b>	-	<b>0.9%</b>	-	<b>0.6%</b>

128. As can be seen in Table 4, the projections have become progressively less optimistic overtime, with the Conference Board of Canada now forecasting a mild recession for 2019, a new circumstance that was not contemplated at the time of the 2017 Commission Report.

129. Similarly, where available, forecasts of Alberta’s unemployment rate have been steadily adjusted higher since the 2017 Commission hearings. At the time of the hearings, the Alberta government was forecasting an unemployment rate of 6.1% for 2019. By the time of the release of the 2017 Commission Report, that forecast had been raised to 6.4%.

130. The Government’s 2019-20 First Quarter Update, released on August 27, 2019, indicated that both operating expenses and debt servicing costs have continued to climb.<sup>96</sup>

131. As demonstrated in Table 5, the expected unemployment rate for Alberta for 2019 – based on averaging publicly available forecasts – is 6.8%. The weakness in the labour market will translate to a slowdown in housing activity and dampen growth in consumer spending.

<sup>96</sup> 2019-20 First Quarter Fiscal Update, August 27, 2019.

*Table 5: Unemployment Rate (2019 Forecast), forecasters with updated information*

Institution	Q2 2019	
	Date of Forecast Publication	2019F
National Bank of Canada	Jul/Aug-19	6.7%
BMO	Aug-19	6.7%
CIBC	Jul-19	6.9%
Scotia	Jul-19	6.7%
RBC	Jun-19	6.8%
TD	Jun-19	6.8%
<b>Average</b>	-	<b>6.8%</b>

132. As outlined above, the new facts and circumstances which have arisen with respect to the economic and fiscal criteria show that the outlook for Alberta’s economy is more pessimistic than at the time of the release of the 2017 Commission Report. The Lieutenant Governor in Council has concluded that these negative new facts and circumstances, along with the other reasons articulated above, justify a departure from the 2017 Commission recommendations.

*New evidence regarding the level of increases or decreases provided to other programs and persons funded by the Government*

133. The Lieutenant Governor in Council has also determined that new facts and circumstances related to the level of increases or decreases in compensation to other persons and programs funded by the Government have arisen since the release of the 2017 Commission Report.

134. As discussed above, many of the public sector union collective agreements included clauses that provided for postponed negotiation, and arbitration if negotiation was unsuccessful, for their members’ wages for 2019-2020. When negotiations did in fact break down, the Government’s position, as set out in its Arbitration Proceeding Brief, was to extend the wage restraint by maintaining the rates of pay at current rates for 2019-20.<sup>97</sup>

135. In June, the *Public Sector Wage Arbitration Deferral Act*<sup>98</sup> (*Arbitration Deferral Act*) was passed. Section 2(1) suspended the operation of the arbitration process provided in wage

<sup>97</sup> Brief of the Employer Crown in Right of Alberta in the Matter of a Collective Agreement Wage Re-opener Interest Arbitration Proceeding, June 17, 2019.

<sup>98</sup> SA 2019 c P-41.7.

reopener provisions for public sector unions until October 31, 2019. The *Arbitration Deferral Act* impacts 24 collective agreements.<sup>99</sup>

136. President of the Treasury Board and Minister of Finance, Travis Toews, issued the following statement with regard to the *Arbitration Deferral Act*:<sup>100</sup>

The *Public Sector Wage Arbitration Deferral Act* would temporarily postpone wage arbitration hearings until after October 31, 2019. This will give us the time required to fully understand Alberta's economic situation and take into consideration the advice from the MacKinnon panel, as we work to balance the budget by 2022-23.

We owe it to Albertans, and all public sector workers, to come to the table with information on the state of our economy and the impact it will have on our finances, so we can make responsible and informed decisions. ... Negotiating without this information would be fiscally irresponsible and we are seeking the time to make the right decisions for all Albertans.

137. An interim injunction of the operation of the *Arbitration Deferral Act* as it applied to the AUPE was granted by Mr. Justice Macklin in *Alberta Union of Provincial Employees v. Alberta*.<sup>101</sup> However, the majority of the Alberta Court of Appeal allowed the Government's appeal and set aside the injunction. As a result, the public sector union arbitration processes are delayed as set out in the *Arbitration Deferral Act*.

138. The Alberta Labour report in evidence at the time of the 2017 Commission hearing has been recently updated.<sup>102</sup> The updated report shows that even more of the public sector unions have entered into agreements with no wage increases in 2017-2018 and 2018-2019, with some extending the wage freeze to 2019-2020.

### MacKinnon Panel Report

139. On September 3, 2019 the "Report and Recommendations Blue Ribbon Panel on Alberta's Finances,"<sup>103</sup> also known as the MacKinnon Panel Report, was released.<sup>104</sup> The MacKinnon Panel was tasked with conducting an independent review of the province's finances and providing advice to government on balancing the budget by fiscal year 2022-23.<sup>105</sup> Although the MacKinnon Panel Report contains recommendations only, the Government has

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<sup>99</sup> UNA News Bulletin Spring 2019 Volume 43 Number 2.

<sup>100</sup> Alberta Government News Release June 13, 2019 "Public sector wage arbitration deferral: Minister Toews".

<sup>101</sup> *Alberta Union of Provincial Employees v. Alberta* 2019 ABQB 577 at para 55.

<sup>102</sup> "Unionized Public Sector Percentage Wage Increases in Alberta" Alberta Labour, August 16, 2019.

<sup>103</sup> "Report and Recommendations Blue Ribbon Panel on Alberta's Finances," August 2019.

<sup>104</sup> Government of Alberta News Release, September 3, 2019, "Report shows government overspending problem".

<sup>105</sup> Letter dated May 7, 2019, addressed to Ms. Janice MacKinnon, Chair, Blue Ribbon Panel on Alberta's Finances from Hon. Travis Toews, President of Treasury Board and Minister of Finance.

stated that the information provided will be used in planning Budget 2019 to be tabled in the fall.<sup>106</sup>

140. The MacKinnon Panel Report summarized their findings as follows:

The seriousness of the financial challenge is undeniable. Without decisive action, the province faces year after year of deficits and ever-increasing debt. In order to balance the budget by 2022/23, notwithstanding the effects of both population growth and inflation, there can be no increases in government expenditures for four years and, in fact, the provincial government will actually need to reduce operating spending by at least \$600 million and substantially reduce capital spending.<sup>107</sup>

141. Although no decision has been announced yet by Government with regard to changes to public sector compensation going forward, it is clear that, in the opinion of the MacKinnon Panel, the across-the-board fiscal restraint policy with regard to public sector compensation will need to continue if Government is going to meet its goal of balancing the budget by fiscal year 2022-23:

In 2018/19, Alberta spent \$26.9 billion on public sector compensation. This represents 55% of the Alberta government's operating budget and is the largest single expense in that budget. Hence, successful spending restraint has to involve restraint in the compensation and size of the public sector.<sup>108</sup>

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<sup>106</sup> Government of Alberta News Release September 3, 2019 "Report shows government overspending problem".

<sup>107</sup> "Report and Recommendations Blue Ribbon Panel on Alberta's Finances," August 2019, at 4.

<sup>108</sup> "Report and Recommendations Blue Ribbon Panel on Alberta's Finances," August 2019, at 44.

*Table 6 - Economic Data*

Year	2014	2015	2016	2017	2018	2019	2020
<b>Consumer Price Index (CPI)<sup>109</sup></b>							
CPI (Alberta; all items)	132.2	133.7	135.2	137.3	140.6	142.8	145.4
CPI increases		1.1%	1.1%	1.6%	2.4%	1.6%	1.8%
CPI (% of 2014)	100.0%	101.1%	102.3%	103.9%	106.4%	108.1%	110.0%
<b>Real Primary Household Income Per Capita<sup>110</sup></b>							
Growth in Real Primary Household Income per Capita		0.6%	-12.9%	0.3%	0.5%	0.7%	1.3%
Real Primary Household Income per Capita (% of 2014)	100%	100.6%	87.7%	87.9%	88.4%	89.0%	90.1%
<b>Judicial Salaries (As of April 1)</b>							
Nominal Judicial Salaries – 2017 Commission Recommendations	279,825	286,821	293,991	296,382	302,304	309,500	318,500
Real Judicial Salaries – 2017 Commission Recommendations (2014\$)	279,825	283,603	287,468	285,373	284,243	286,426	289,544
Real Judicial Salary – 2017 Commission Recommendations (% of 2014)	100.0%	101.4%	102.7%	102.0%	101.6%	102.4%	103.5%
Nominal Judicial Salaries – Decision of Lieutenant Governor in Council	279,825	286,821	293,991	293,991	293,991	293,991	293,991
Real Judicial Salaries – Decision of Lieutenant Governor in Council (2014\$)	279,825	283,603	287,468	283,071	276,427	272,074	267,263
Real Judicial Salary – Decision of Lieutenant Governor in Council (% of 2014)	100.0%	101.4%	102.7%	101.2%	98.8%	97.2%	95.5%
<b>2013 Commission Forecasts<sup>111</sup></b>							
CPI increase forecast		2.5%	2.1%				
CPI forecast (% of 2014)	100.0%	102.5%	104.7%				
Real judicial salary based on 2013 Commission CPI forecast (2014\$)	279,825	279,825	280,921				

*Estimates and forecasts shaded grey.*

<sup>109</sup> 2014-2018 from Statistics Canada Table 18-10-0005-01. Forecast for 2019 & 2020 from *2018-19 Third Quarter Fiscal Update and Economic Statement* at 14 (<https://open.alberta.ca/publications/6042188>).

<sup>110</sup> Primary Household Income for 2014-17 from Statistics Canada Table 36-10-0224-01. Calculation of change in Real Primary Household Income per Capita, estimate for 2018, and forecast for 2019 & 2020 provided by Catherine Rothrock, Chief Economist, Alberta Treasury Board and Finance.

<sup>111</sup> *2013 Commission Report* at 35.